

# Lesson Nr. 1: Don't Fall Tax Blog

## The Grand Prix in India

Or

## Why understanding Permanent Establishment concepts is key

This time, around 11 years ago on October 27, 2013, the last Formula 1 race of the Indian Grand Prix took place. After only three seasons, the Grand Prix was terminated, closely linked to a significant tax case involving the Indian tax authorities and the concept of a Permanent Establishment (PE).

In this case, the Indian authorities argued that Formula One World Championship Ltd., which held the commercial rights to the race, had established a Permanent Establishment at the Buddh International Circuit in India, triggering a local tax obligation. This case, later affirmed by the Indian Supreme Court in 2017, marked an important precedent in understanding PE.

Since then, the topic of Permanent Establishment has only grown in relevance as international business and remote work have redefined traditional borders and tax obligations.

### ***What is a Permanent Establishment?***

According to international tax principles and guidelines published by the OECD and the UN, a Permanent Establishment (PE) is typically defined as a

- fixed place of business
- through which the business of an enterprise
- is wholly or partly carried on.

This concept is widely used in double tax treaties to determine when and where an enterprise becomes liable for corporate tax in a foreign jurisdiction.

A Permanent Establishment generally requires:

- A fixed business location,
- Business activities conducted fully or partially from that location,
- And the establishment to be treated as a separate taxable entity from its headquarters, with its own bookkeeping responsibilities.

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In essence, establishing a PE means a business has created a taxable corporate presence in a foreign jurisdiction.

## ***Key Triggers for Permanent Establishment***

The criteria for establishing a PE vary by country, but common factors include:

- **Presence and Purpose of Work:** Working remotely (e.g., home office or temporary project location) may trigger PE if there is no alternative workplace provided and the employer actively requires the work to be conducted from abroad.
- **Employee Roles:** Activities by employees who negotiate or conclude contracts on behalf of their employer in another country may lead to PE.
- **Business Nature:** The work must go beyond mere auxiliary or preparatory activities to create a PE.

The OECD, the UN and Swiss tax authorities outline that a PE may arise from a "Fixed Place of Business" or "Agency PE" and, with digital business models, increasingly consider where sales are generated as a basis for PE.

In the Swiss double tax treaties concluded over the last 10 years it becomes evident that the thresholds for creating a PE have lowered.

## ***Differentiating PE from Fixed Establishment (FE)***

While a Permanent Establishment generally implies corporate tax liability, the Fixed Establishment concept often pertains to Value Added (VAT) resp. Sales Tax obligations. Although there may be overlaps between the two, important distinctions remain:

1. **Substantial Presence:** The OECD defines PE with a focus on where core business decisions are made and where the business has substantive infrastructure or personnel.
2. **Operational Relevance:** Fixed Establishments, particularly under EU and OECD guidelines, considers the presence of resources or personnel adequate to receive and utilize services. However, the exact location of decision-making within an FE framework is often less critical.
3. **Jurisdictional Variance:** For instance, the European Union has seen extensive legal interpretations of Fixed Establishment criteria by the European Court of Justice, clarifying that mere VAT registration does not qualify as an FE.

In Switzerland, an FE only exists if a PE is recognized, aligning with countries like Turkey and Serbia.

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## *The Formula One PE Case in India*

In a landmark ruling on April 24, 2017, the Indian Supreme Court held that Formula One World Championship Ltd. had established a Permanent Establishment at the Buddh International Circuit in India, where the Formula 1 Grand Prix was held in 2011, 2012, and 2013. By conducting substantial business activities at a fixed location, the company was found to have crossed the minimum threshold for creating a taxable corporate presence in India.

## *Key Points to Manage and Mitigate Permanent Establishment Risks*

PE check matrix:

